

**OFFICIAL FILE**  
**ILLINOIS COMMERCE COMMISSION**  
**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

**ORIGINAL**

ILLINOIS  
COMMERCE COMMISSION

2006 SEP 20 P 3: 32

BARBARA R. MILLER and  
CHUCK NWANESHIUDU, pro se

Petitioners,

v.

SANTANNA NATURAL GAS CORPORATION

Respondent

CHIEF CLERK'S OFFICE

Docket: No. 06-0168

**PETITIONERS APPLICATION FOR REPREHEARING OF THE  
ILLINOIS COMMERCE COMMISSION**

Now come Chuck Nwaneshiudu and Barbara Miller, together pro se, pursuant to Section 200.880 of the Illinois Commerce Commission's ("Commission") Rules of Practice, 83 Illinois Administrative Code, Section 200.880, to submit their Application for Prehearing in the above captioned proceeding and to respectfully request that the Commission reconsider and amend its decision in this proceeding pursuant to Section 10-113 of the Public Utilities Act 220 ILCS 5/10-113. In support of this application we state the following:

**Background**

When the People of the State of Illinois first began to experience higher than usual gas prices in 2000 and 2001, headlines detailed a "sweetheart deal" between Peoples Energy and Enron; the State of Illinois and the City of Chicago then sued Peoples Gas for "engaging in illegal business practices that enriched the company at the expense of consumers," but when Santanna Energy was sued by the State for illegal business practices, the State excluded hundreds of legitimate billing complaints, entered a consent decree and dismissed it's complaint against Santanna with prejudice, much to the surprise of the Citizens Utility Bureau, the press and the

People of the State of Illinois. In so doing, the State made it appear as if legitimate billing complaints against Santanna were unfounded and unwarranted. The States actions also signaled to Santanna that it was beyond reproach, thus Santanna increased its abusive collections practices. Petitioners in this instant are an excellent case in point.

It was during this time that a frenzy to induce Peoples Gas customers to migrate to Santanna began: Santanna pursued Petitioners small business to enter into an agreement for gas services, with promises of 20-35% savings over Peoples Gas, when in the end, Petitioners company actually paid 30-70% more. While Illinois Consumers had safety-nets, none existed for small business owners, such as Petitioners, who were left to face Santana in court, without proper legal representation which caused a default judgment with an erroneous amount to be entered against their company. To make matters worse, the Illinois Commerce Commission, the Citizens Utility Board, the City of Chicago and the Illinois Attorney General, excluded billing issues from their complaint , which was then dismissed with prejudice, making it appear as if people with legitimate billing issues had filed irrelevant, unwarranted complaints that had no basis in law. Since that time until now, Petitioners legitimate billing dispute has never been properly addressed by the Commission nor by Santanna either in 2002 and nor in 2006.

## **INTRODUCTION**

1. This action arises as a result of the Prehearing Examiner's failure to conduct an impartial Prehearing on February 28, 2006, pursuant to Section 200.25 of the Illinois Administrative Code and it is brought under Section 10-113 of the Public Utilities Act 220 ILCS 5/10-113,; 220 ILCS 5/5-202.1, Section 5.202.1(a); and 220 ILCS 5/5-203, Section 5-203((220 ILCS 5/3-105).
2. On information and belief, the Commission has jurisdiction over this action pursuant to Section 220 ILCS 5 /3-105 of the Public Utilities Act, since Santanna was not a designated

alternative energy provider until almost 2 years after entering into agreements (verbal and written) with Petitioners Company<sup>1</sup>. *"Public utility means and includes, except where otherwise expressly provided in this Section, every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in: the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water, or light, except when used solely for communications purposes"*;

3. Therefore, the Alternative Energy Provider Law does not apply here (**See ICC Docket 02-0551; also Exhibit A, p. 24, line 5-20**).

#### **Petitioner's Allegations**

4. The Prehearing Examiner failed to assemble a complete factual record from the February 28, 2006 Prehearing;

5. The Prehearing Examiner's procedural history, analysis and conclusion's were based on numerous assumptions and did not represent the full, factual record:

6. The Prehearing Examiner failed to familiarize himself with the case, prior to the Prehearing and failed to investigate the issues properly;

7. The Prehearing Examiner's actions prejudiced the Prehearing in Santanna's favor by making numerous incorrect assumptions about Petitioners. (**See Exhibit A: p. 41, line-13-14; p, 21 line 16-21; p. 23, line 6-8; p. 41, line 13-14;**)

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<sup>1</sup> Santanna entered into a verbal agreement for gas services with Petitioners Company on December 14, 2000 and a written agreement on August 10, 2001, however, Santanna did not become a designated alternative energy provider until November 2, 2002.

8. Santanna's Motion to Dismiss was based on the question of jurisdiction; however, the Hearing Examiner totally ignored the fact that Santanna was not a designated energy provider from December 2000 – October 31, 2002, which was the duration of Santana's contract with Petitioners Company, Continental Financial Mortgage, Inc., "CFMI"; therefore the Commission does have jurisdiction; (See Exhibit A, p. 29 line-6-8)

9. The Prehearing Examiner apparently did not believe Petitioners had a legitimate billing dispute, otherwise he would have at least given Petitioner's the benefit of the doubt and reviewed Santana's invoices to determine whether there was an issue with Santanna's billing (Exhibit A, p. 19, line 12-22); p. 21, line 5-15);

- a. When Petitioners attempted to explain that Santanna had shown no shown good faith in resolving the billing issue, the Hearing Examiner stated "Well, ma'am, I can't can you point to any rule, statue or regulation that requires them to resolve this matter." Exhibit A, p 26.

10. The Prehearing Examiner failed to take State and Federal consumer rights, and the rules of procedure for debt collections, contract and other business laws into consideration when he made that statement; had the Prehearing Examiner reviewed Santanna's invoices he would have found that Santanna's sworn Affirmation does not to include \$7,000 in payments/credits/adjustments in 2002; (See Exhibit B);

11. The Prehearing Examiner completely ignored evidence presented by Petitioners at the Prehearing, that came from the Commissions own records, that prove Santanna was not a designated Alternative Energy Provider during the time it entered into an agreement with Petitioners CFMI", on August 10, 2001;

12. In fact, Santanna did not become a designated Alternative Energy Provider until November 2, 2002 (IOCC Docket 02-0441);

13. Pursuant to Section 220.ILCS 5/Act.III, Santanna was, by definition, a Public Utility throughout duration of its contract with CFMI (December 2000 – November 1, 2002);

14. The Prehearing Examiner failed to cite any law, rule, or evidence contrary to this fact and failed to address this issue in his written report and analysis; **(See Exhibit A, p. 30, line-6-8)**

15. In so doing, the Prehearing Examiner failed to assemble a complete factual record;

16. By omitting this important information from the record, the integrity of the fact-finding process, and the Commission's ability to derive at a legally sustainable decision on the question of jurisdiction, were also compromised;

### **Argument**

#### **I. Commission Analysis and Conclusions**

17. The Prehearing Examiner was incorrect when he wrote that Petitioners were party to Santanna's default judgment when they were not;

18. The Prehearing Examiner was incorrect when he assumed that the court held Petitioners responsible for the debts of the corporation when it had not;

19. Santana's successor liability case against Petitioners was dismissed with prejudice as of June 8, 2006;

Therefore, based on all of the above, the Prehearing Examiners premise was incorrect and therefore his reports and conclusions are also incorrect:

**A. The Prehearing Examiner incorrectly stated, "This complaint appears to stem from a dispute between Complainants and Respondent in 2001 that ultimately resulted in a judgment against complaints and CFMI by the Circuit Court of Cook County for approximately \$50,000."**

20. The Prehearing Examiner's statement is incorrect: the default judgment was entered on July 14, 2005, against CFMI, not Petitioners.

**B. The Prehearing Examiner stated, “Respondent seeks to recover \$10,621.73 of that amount for unpaid gas supplies.”**

21. The Prehearing Examiner apparently believed that Santanna’s default judgment amount was correct<sup>2</sup>;

22. The Prehearing Examiner also failed to use his discretion to verify Santanna’s debt amount;

23. Santanna’s sworn Affirmation has numerous errors, miscalculations, and omissions, for example over \$7,000 in credits, payments and adjustments are not included in the Affirmation; had the Hearing Examiner taken time to review the record he would have found that Petitioner’s are correct about Santanna’s questionable billing practices; (See **Exhibit B**);

24. Pursuant to Section 200.25 (a)(b) of the Illinois Administrative Code which addresses integrity of the fact-finding process and fairness, the Hearing Examiner and the Commission must grant Petitioner’s Motion for Rehearing;

**C. The Prehearing Examiner incorrectly stated “Complainants, appear to be using this complaint to invoke the Commissions protection against the \$10,621.73 portion of the default judgment.**

25. The Prehearing Examiner assumed that the Court had found Petitioners responsible for the debts of a dissolved corporation, when no such final order was ever entered against Petitioners;

26. Petitioners were not party to Santanna’s case (03 M1 126454);

27. Petitioners tried more than once to explain this to the Prehearing, but apparently the Prehearing Examiner did not believe them; (See **Exhibit A, p 22, line 1-22**);

28. The Prehearing Examiner’s report and analysis were written with a slant and also failed to give Petitioners the benefit of the doubt, “*complainants appear to be using this complaint to invoke*

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<sup>2</sup> The default judgment was entered on July 14, 2005 after Santanna “threatened” Petitioner’s former counsel lacked due diligence in filing his Answer on time, in addition, the Court did not use its discretion to verify the alleged amount for itself. The matter is currently on Appeal.

*the Commissions protection against the \$10,621.72 portion of the default judgment.”* A more concise, unprejudiced and fair statement would have stated “*complainants appear to be seeking the Commission’s assistance in resolving an on-going billing dispute,*” because that is precisely what Petitioners were trying to do.

29. From the very beginning, the Prehearing Examiner took a very narrow and negative view of Petitioners by ignoring key issue and minimizing the importance of their responses by calling upon Santana’s counsel for clarity on legal issues that should have been familiar to the Prehearing Officer;

**B. On Jurisdiction, the Prehearing Examiner stated “An informal dispute such as Complainants alleged to have filed on September 5, 2002 does not bring this matter to the Commission. The record is silent with regard to whether a formal complaint was filed at that time or whether the Commission issued an Order. We can only presume that there was no such action. Whatever the jurisdiction the Commission may have had then over the Respondent is irrelevant. No formal complaint was brought to the Commission and the informal complaint process did not invoke Commission action (83 Ill. Adm. Code 100.160)**

30. The Commission’s record is silent due to Commission errors and omissions;

31. The Commission also failed to advised Petitioners about the formal Prehearing process, therefore, being uninformed Petitioners could not have filed a formal complaint<sup>3</sup>;

32. The record is further silent because the Commission incorrectly paraphrased Petitioners informal complaint (**See Exhibit C**) and excluded the very basis of Petitioner’s informal telephone complaint which was Santanna’s failure to credit a \$3,500 adjustment from Peoples Energy to Petitioners account and advising Petitioners that there was no adjustment due;

33. As a result of the Commission’s failure to type a concise record of Petitioner’s informal telephone complaint, Petitioner’s billing issue was never addressed, neither by the Commission nor Santanna;

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<sup>3</sup> The Citizens Utility Board confirmed the Commissions error in failing to inform the public about the formal complaint process in 2002.

34. In so doing, the Commission violated Section 200.160 IAC, subchapter E states that states, "The Commission acting through its staff will investigate and attempt to resolve informal complaints without formal action. The presentation of an informal complaint shall be without prejudice to the right to file a formal complaint. Nothing in this Section shall prohibit the Commission from proceeding on its own motion on the basis of an informal complaint."

35. The Commission failed to properly investigate Petitioner's informal telephone complaint and dismissed the complaint with prejudice by failing to further advise Petitioner's of the right to file a formal complaint;

36. Petitioner's have suffered great humiliation, mental anguish, financial stress and psychological and emotional pain and suffering due to the Commissions error;

37. By failing to uphold the integrity of fairness during the Prehearing and writing his reports with a slant, the Prehearing Examiner failed to exercise good faith and fairness towards Petitioners which only served to further prejudiced the Prehearing in Santana's favor.

**E. On the matter of Time Limitation, the Hearing Examiner stated, "This Commission also finds this complaint to be barred by Section 9-252.1 of the Act. This Section states in relevant part: "(A)ny complaint relating to an incorrect billing must be filed with the Commission no more than 2 years after the date the customer first has knowledge of the incorrect billing." The instant complaint was filed on February 28, 2006. It is evident from the cited language that Complainants were aware of what they perceived to be incorrect billing from Respondent some time during 2001. Under the time constraints set forth in Section 9-252.1. Complainants should have filed this complaint in 2003 for errors occurring in 2001 and in 2004 for errors occurring in 2002. By failing to do so, they failed to comply with 2 year statutory requirement established under Section 9-252.1 of the Act. This complaint must be dismissed as time-barred under Section 252.1**

38. Petitioners did file an informal telephone complaint with the Commission in 2002 (ILCC file #22829) on August 12, 2002;

39. Petitioners should not be blamed nor penalized for the errors and omissions of the Commission;



40      Petitioners should not be penalized because the Commission's staff incorrectly paraphrased and misstated Petitioner's telephone complaint which induced the wrong response from Santanna; **(See Exhibit D)**

41.      The Commissions actions in 2002 and again in 2006 infringed upon Petitioner's Constitutional right to due process, and equal rights and protection under the law;

42      In February 2006, Petitioner's learned that the Commission had somehow inadvertently mailed its dismissal letter to Petitioner's at the wrong address; consequently, Petitioners never received a copy of the Commissions September 5, 2006 dismissal letter until February 2006 after Petitioners wrote a letter to the Governor;

43      The letter does not advise Petitioners of the formal complaint process and Petitioner's informal complaint was dismissed with prejudice; **(See Exhibit E)**

44      The Commissions actions caused Petitioners informal complaint to be purged from Commission records and as a direct result, the Commissions record is silent on this issue due to Commission error;

45.      Due to Commission error, Petitioners were unable to comply with the 2 year statutory time-limit, therefore, Petitioners should not be penalize for the errors and omissions of the Commission;

46.      In order to be fair to Petitioners, the Commission must return and properly address Petitioner's billing issue and also correct inaccuracies in the record;

47.      The Prehearing Examiner did not investigate Petitioner's complaint properly otherwise he would have found inaccuracies in Santanna sworn Affirmation and its invoices that were submitted as exhibits by Petitioner's;

**F. Petitioners Take Issue with the Commissions Findings and Ordering Paragraphs:**

- (1) Santanna was not an Alternative Energy Provider from December 2000 to November 6, 2002, therefore, the Commission has jurisdiction;**
- (2) Whether Petitioners were neither residential nor small customers is irrelevant when the underlying issue is Santana's questionable billing practices which the Commission has ignored since 2002;**
- (3) This case should not have been dismissed for all the reasons stated, as it was Commission error that caused the record to be silent;**

Whereas Petitioners continue to be injured by the Commissions actions, inactions, oversights and omissions, Petitioners seek a Rehearing from the Commission and further request that Commission records be corrected to reflect factual information, not assumptions; Petitioners also request equitable and other relief from Santanna's unfair and fraudulent practices and order Santanna to correct its invoices and verify its money claim; Petitioners further seek intervention from the Commission with resolving Petitioner's billing dispute by conducting an audit to review and compare all records, invoices, statements and payment ledgers from both Santanna and Peoples Gas and to grant Petitioner's any other fair and equitable remedy and relief that will bring Santana's abusive collections practices to an end.

### CERTIFICATION

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that they verily believes the same to be true.

  
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Chuck Nwanchinadu - Defendant - Pro se

  
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Barbara Miller - Defendant - Pro se

September 19, 2006  
Paul F. Markoff  
Crowley Barrett & Karaba Ltd  
20 S. Clark Street, Suite 2310  
Chicago, Illinois 60603  
Tel: 312-726-2468

## Petitioners Exhibits

- A. Excerpts from Transcripts of the February 2006 Prehearing
- B. Petitioners Work-up Sheet (showing Santana's invoice and Sworn Affirmation are incorrect)
  - B1 Santana Invoice with final balance as \$17,634.79
  - B2 Santana's Sworn Affirmation
- C. The Commissions paraphrased misstatement of Petitioners informal telephone complaint (dated **September 5, 2002**);
- D. Santana's response (dated **September 5, 2002**)
- E. The Commissioner's dismissal letter sent to wrong address (Dated **September 5, 2002**)

**STATE OF ILLINOIS  
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SANTANNA NATURAL GAS CORPORATION

Respondent

Docket: No. 06-0168

**NOTICE OF FILING – PRO SE**

**PLEASE TAKE NOTICE** that on this 19th day of September, 2006, defendant's Chuck Nwaneshiudu and Barbara Miller filed a Petition for Prehearing with the Illinois Commerce Commission, a copy of that motion is attached hereto and herewith served upon you.

  
Chuck Nwaneshiudu - Defendant – Pro se

  
Barbara Miller - Defendant – Pro se

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing Notice of Application was served upon the following party(ies) Santanna Energy Services through and by its attorney Paul Markoff, by Priority Mail with signature confirmation on this 19<sup>th</sup> day of September, 2006 at or before the hour of 5:00pm

  
Chuck Nwaneshiudu - Defendant Pro se

  
Barbara Miller - Defendant – Pro se

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